

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

SANDRA E. KARDOS
P.O. BOX 9333
VAN NUYS, CA 91409

Certified Public Accountant Certificate No. 17488

Respondent.

Case No. AC-2007-28


OAH No. L2007100720

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on 09-01-2008.

It is so ORDERED on 08-01-2008.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

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PROPOSED DECISION

Robert S. Eisman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on June 12 and 13, 2008.

William Taylor, Deputy Attorney General, represented Carol Sigmann, Executive Officer of the California Board of Accountancy, Department of Consumer Affairs of the State of California (complainant).

Sandra E. Kardos (respondent) appeared and represented herself.

The matter was submitted on June 13, 2008.

FACTUAL FINDINGS

1. Complainant filed the Accusation on December 21, 2007, while acting in her official capacity as the Executive officer of the California Board of Accountancy (Board).
2. On April 21, 1972, the Board issued Certificate number 17488 (Certified Public Accountant) to respondent. Respondent's license has been active at all times relevant to the charges and allegations in the Accusation, remains active, and is renewed through August 31, 2009.
3. Respondent has employed Charles Brink since 1979, and he currently works in respondent's home office. Although Mr. Brink had "prior experience in engineering," when he started working for respondent he was involved in "defending tax shelters" and computer support to accounting, which included development of software applications for tracking tax

data and preparing IRS Forms W-2 and W-3.¹ Mr. Brink is not a CPA or accountant and neither he nor respondent produced any documentary evidence that he had formal education or training in bookkeeping or accounting. Mr. Brink testified that for general accounting purposes, respondent uses QuickBooks 99 software.²

Mr. Brink does most of the "accounting" work in respondent's office. Although Mr. Brink alleges that he is more than an office manager and respondent reviews all accounting documents, respondent has, in effect, delegated most, if not all, authority for performing the accounting functions of her office to Mr. Brink. Mr. Brink testified that respondent tells him what needs to be done and he does it; he produces all the accounting products generated by respondent's office.

4. On October 2, 2006, the Office of Professional Responsibility, Internal Revenue Service (IRS), in the matter of the *Director, Office of Professional Responsibility v. Sandra Eve Kardos*, Complaint No. 2005-1, issued a Decision by Default, disbarring respondent from practicing before the IRS. The disbarment became effective 30 days after the Decision by Default was issued.

5. The facts and circumstances surrounding issuance of the Decision by Default are that the Office of Responsibility filed a Complaint on November 1, 2004, alleging that respondent engaged in disreputable conduct and demanded that respondent be disbarred from further practice before the IRS. The hearing on the merits was to commence at 9:00 a.m. on August 30, 2006, in the Santa Monica, California, courthouse. The parties had previously agreed to the time and location of the hearing and an Amended Notice of Hearing was sent to each party on August 17, 2006.

In the late afternoon or evening of August 28, 2006, Charles Brink, transmitted a facsimile message to the administrative law judge and counsel for the Office of Professional

¹ The Form W-2 is the Wage and Tax Statement that is prepared for each employee of the company. Copies of the form are sent to the employee for retention by the employee and use when preparing their federal, state and city or local income tax returns. The accountant is also required to furnish the Social Security Administration with copy of the W-2 prepared for each company employee. Copies of all W-2 forms are also sent to the Social Security Administration. The Form W-3 is used for the transmittal of wage and tax statements (Forms W-2). The accountant is to send the Form W-3 with all the Forms W-2 to the Social Security Administration.

² Quickbooks 99 is an older version of the current QuickBooks highly automated small business accounting software. The Quickbooks software is constantly updated by its manufacturer; the current version is Quickbooks 2008. Quickbooks 99, when it was first introduced in 1999, was considered low-end, popular, personal and small business accounting software, which is not comparable to the high-end accounting software packages that are used by many professional accounting firms. No specialized accounting knowledge is required to effectively use QuickBooks 99.

Responsibility who were assigned to the IRS hearing, informing them that respondent had injured her back and was in no condition to defend herself. However, Respondent did not provide any medical records or statement from a doctor to verify her condition or inability to participate in the hearing.

The case was called at 9:30 a.m. on August 30, 2006. However, neither respondent, nor any person authorized to represent respondent appeared at the hearing. Counsel for the Office of Professional Responsibility then made a motion for entry of a default. The administrative law judge took the motion under advisement and, on September 1, 2006, issued an order directing respondent to show cause, no later than September 15, 2006, why the motion should not be granted. The order directed that "a response shall include a sworn statement describing respondent's medical condition and demonstrating that she was unable to attend and participate in the August 30 hearing." As of October 2, 2006, respondent had not responded to the Order to Show Cause. The administrative law judge then issued the Decision by Default.

6. Although respondent had not notified the Board regarding the IRS proceeding, on January 23, 2007, the Board became aware that respondent had been disbarred from practicing before the IRS, effective October 2, 2006. On January 23, 2007, the Board sent a letter, by certified mail, to respondent, asking her to explain the facts underlying the IRS action. The Domestic Return Receipt that was attached to the envelope was returned to the Board, indicating that respondent had received the certified letter on January 26, 2007. Since respondent did not reply to the Board's initial letter, on February 23, 2007, the Board sent a second letter, by certified mail, advising respondent that, pursuant to California Code of Regulations, title 16, section 52, she was required to respond to the Board's inquiry within 30 days. Respondent did not provide a timely response to the Board's second letter.

7. Chris Morgensen is the president of Flyte-Weld, Inc. (Flyte-Weld), which is a company in North Hollywood, California, that provides welding services for the aviation industry. Approximately five or six employees work at the company's North Hollywood facility. Respondent performed various accounting services for Flyte-Weld, including the preparation and filing of IRS Forms W-2 and W-3 and the corporate tax returns.

8. In a notice dated June 19, 2005, the IRS informed Flyte-Weld that its wage reports (Form W-3), that were submitted to the Social Security Administration (SSA) for the tax year 2003, were less than the amounts Flyte-Weld reported to the IRS on its Employer's Federal Tax Return. The IRS further informed Flyte-Weld that SSA had contacted them more than once on this matter, but the company had not provided the information needed to resolve the difference in the reported amounts. According to the IRS notice, Flyte-Weld was subject to a possible penalty assessment in the amount of \$40,493.34.

9. In a notice dated October 5, 2005, the California Franchise Tax Board (FTB) informed Chris Morgensen that it had not received his California Corporation Tax Return for the tax year ending March 31, 2004, and that he was required to file a return and pay the tax shown on the return, plus penalties and interest if there was a balance due.

10. In a notice dated January 30, 2006, IRS informed Flyte-Weld that the company had been charged a penalty for failing to file Forms W-2 for the tax period ending December 31, 2002, and indicated that a penalty in the amount of \$48,263.30 would be assessed unless the company provided IRS with reasonable cause why the penalties should be removed or reduced.

11. Whenever Mr. Morgensen tried to contact respondent regarding the penalty notices, he would be referred Mr. Brink, who would inform Mr. Morgensen that the penalty notice was the result of an IRS error and that he was taking care of the problem.

12. In addition to the IRS and FTB notices that Flyte-Weld received, the company's employees started complaining that they received correspondence from SSA indicating that their had "0" income. Due to respondent's apparent negligence in handling Flyte-Weld's accounting needs, Mr. Morgensen decided to terminate his business relationship with respondent and, in February 2006, he retained Robert B. Daley, CPA, as Flyte-Weld's new accountant.

13. Mr. Brink testified that prior to 2002, respondent had been using "substitute" Forms W-2 and W-3 for reporting tax information to SSA, and that for the tax years 2002, 2003, and 2004, SSA did not properly scan the substitute forms that respondent submitted on behalf of Flyte-Weld and her other clients. As a result, IRS penalty notices were sent to respondent's clients, indicating mismatches between the tax information provided to IRS and the information sent to SSA. SSA's data base indicated that for the tax years in question, the Forms W-2 and W-3 were not submitted by or on behalf of Flyte-Weld, which resulted in an SSA data base entry of "0" income for each of those tax years.

14. The 2008 IRS publication, "Instructions for Forms W-2 and W-3" states, in pertinent part:

Substitute forms. If you are not using the official IRS form to furnish Form W-2 to employees or to file with the SSA, you may use an acceptable substitute form that complies with the rules in Pub. 1141, General Rules and Specifications for Substitute Forms W-2 and W-3. Pub. 1141, which is revised annually, is a revenue procedure that explains the requirements for format and content of substitute Forms W-2 and W-3. **Your substitute forms must comply with the requirements in Pub. 1141.** [Emphasis in Original.]

It is inferred that similar IRS instructions pertaining to the use of substitute forms were in effect for the 2002, 2003, and 2004 tax years.

Mr. Brink described respondent's preparation of substitute Forms W-2 and W-3 as a mechanical operation generated by his accounting program. However, neither respondent nor Mr. Brink provided any evidence that the substitute Forms W-2 and W-3 respondent

used to provide SSA with tax information for 2002, 2003, and 2004, complied with the Pub. 1141 requirements that were in effect during the relevant period.

15. On February 28, 2006, and March 21, 2006, Mr. Daley sent letters to respondent wherein he represented that he was Flyte-Weld's new accountant and requested respondent provide him with the Flyte-Weld accounting documents that were in respondent's possession so that he could prepare the company's tax returns and pay their taxes, which were becoming due. However, respondent did not provide Mr. Daley with any of Flyte-Weld's records.

16. Following Mr. Morgensen's retention of Mr. Daley, respondent received an unsigned letter that was dated February 25, 2006, but more likely received on March 21, 2006, by facsimile³, which stated the following:

Please be advised that effective immediately your services are terminated. Our new CPA, Mr. Robert B. Daley will be in contact with you to request information. You are hereby instructed to provide Mr. Daley with any and all records that he requests. We also request that you provide any information that Mr. Daley requests in a timely manner. Failure to do so will prompt a complaint with the State Board of Accountancy.

Respondent elected to ignore the letter because it was not signed. Neither respondent nor Mr. Brink attempted to contact Mr. Morgensen to verify the authenticity of the letter or to discuss its content. Respondent did not provide Mr. Daley with any of Flyte-Weld's records or any notice that the letter needed to be personally signed by Mr. Morgensen.

17. Mr. Daley spoke with respondent during a telephone call on March 7, 2006. During their conversation, respondent told Mr. Daley that she would provide him with Flyte-Weld's records in about a week. When a week had passed and Mr. Daley had not received any records from respondent, he attempted to call her back, but each time he called, he was referred to Mr. Brink. Then, on March 20, 2006, Mr. Brink informed Mr. Daley that he should not continue calling respondent and that all Mr. Daley's future requests and inquiries should be submitted in writing.

18. Joshua N. Willis has been an attorney in California since December 1992. Mr. Willis specializes in commercial / business litigation law and has had Flyte-Weld as one of his corporate clients since March 2006.

³ As received, the letter was not signed by Mr. Morgensen and contained other inconsistencies, i.e., the letterhead included Flyte-Weld's business address, but respondent's telephone number, and the top margin of the letter indicated that it was sent to respondent by facsimile on March 21, 2006, from "Robert B. Daley, CPA." From this evidence, it is inferred that Mr. Daley prepared the letter at Mr. Morgensen's request and on his behalf.

In a letter dated March 21, 2006, Mr. Willis wrote respondent to advise her that his office represented Flyte-Weld and that it had come to his attention that respondent failed to provide documents to Robert Daley, which Mr. Daley needed to prepare Flyte-Weld's tax returns and resolve ongoing tax issues. Mr. Willis further informed respondent that unless Flyte-Weld's records were immediately provided to Mr. Daley, Flyte-Weld would "avail itself of any and all administrative and legal remedies to obtain such records."

Respondent ignored Mr. Willis' request for Flyte-Weld's records.

19. Mr. Willis subsequently tried to contact respondent by telephone and mail, but he was never able to speak with her and respondent did not respond to his letters. On March 31, 2006, Mr. Willis completed an on-line complaint regarding respondent's failure to provide Flyte-Weld's accounting documents and tax information, and submitted the complaint to the Board.

20. As of the date of this hearing, respondent had still not provided Mr. Daley, Mr. Willis, or Flyte-Weld with the accounting records that were requested repeatedly.

21. Douglas H. Reid has been a CPA since May 1993. He started working for the Board as an investigative CPA in December 1996 and, since that time, he has investigated and evaluated hundreds of complaints for the Board. Mr. Reid is qualified to render opinions regarding accountancy standards of practice.

The Board assigned responsibility for investigating Mr. Willis' complaint to Mr. Reid.

22. In a letter dated April 7, 2006, Mr. Reid informed respondent that a complaint had been filed against her, and he listed the issues alleged in the complaint, which involved respondent's repeated failure to provide the requested Flyte-Weld records. Mr. Reid further informed respondent that the Board was requesting a written response to the allegations within 30 days, to include, at a minimum, documentation that Flyte-Weld's records had been returned and an explanation as to why respondent did not return the company's records when originally requested.

23. Respondent replied by asking under what authority Mr. Reid's request was made. In a letter dated May 31, 2006, Mr. Reid informed respondent that California Code of Regulations, title 16, section 52, required that a licensee "respond to any inquiry by the Board or its appointed representatives," to include "making available all files, working papers, and other documents requested," within 30 days from the time the inquiry is mailed to the licensee." Mr. Reid's letter specifically informed respondent that a response to his original inquiry was required by June 30, 2006.

24. On June 22, 2006, Mr. Reid made a telephone call to respondent's office. Since respondent was allegedly out of the office, he was referred to Mr. Brink. Mr. Brink informed Mr. Reid that respondent had been providing services to Flyte-Weld for 10 years

and that, after Flyte-Weld terminated its business relationship with respondent, Mr. Brink personally delivered the original accounting documents to Flyte-Weld, but retained a copy of the documents. Neither Mr. Brink nor respondent produced any documentary evidence to establish that the records were, in fact, returned to Flyte-Weld.

Mr. Brink also informed Mr. Reid that respondent was corresponding with the IRS in an attempt to resolve the issues that had arisen with respect to the Forms W-2 and W-3 that were submitted by respondent on behalf of Flyte-Weld and respondent's other clients.

25. In a letter dated September 20, 2006, Mr. Willis informed Mr. Reid that as of September 15, 2006, respondent had not provided the records that Mr. Daley originally requested on February 28, 2006.

26. In a certified letter dated September 27, 2006, that respondent received, Mr. Reid informed respondent of the issues identified during his investigation, which were raised by Mr. Daley and Mr. Willis, as well as the representations that had been made by Mr. Brink. Mr. Reid asked respondent to reply no later than October 27, 2006, with information pertaining to a description of the services respondent provided to Flyte-Weld, specifics regarding how and when client records were provided to respondent and how she returned the records to the company, confirmation that respondent's Flyte-Weld files included records and documents received from the company, and information regarding a letter Mr. Brink reportedly sent to the Board's Enforcement Division to respond to the complaint filed by Mr. Willis.

27. As of December 12, 2006, respondent had not responded to any specific requests for information contained in Mr. Reid's enforcement letters and e-mail messages, or the voice messages that he left for respondent.

28. In a letter from the IRS, dated August 17, 2007, Flyte-Weld was informed that its Form W-3 wage reports did not match the amount on its Employer's Federal Tax Return for the tax year that ended 2004 and that the company could therefore be assessed a potential penalty of \$40,823.85.

29. Mr. Daley, in his capacity as Flyte-Weld's new accountant, took steps to help resolve the outstanding issues with IRS and SSA regarding Flyte-Weld's corporate tax returns, and the provision of Forms W-2 and W-3. As a result, no penalties related to the subject Forms W-2 and W-3 or income tax returns had to actually be paid by Flyte-Weld.

30. At the hearing, respondent elected not to testify on her own behalf and complainant did not exercise the right to call respondent as a witness. Only Mr. Brink testified on behalf of respondent. Respondent offered into evidence no letters of reference or other documents attesting to her character.

31. Mr. Brink was not a credible witness. He described how he prepared and mailed quarterly tax returns for respondent's clients. Although he testified that respondent

reviewed everything, it is apparent that Mr. Brink was doing most, if not all, of the document processing in respondent's office. He also received all of respondent's mail and signed for certified mail on behalf of respondent. If Mr. Brink did not refer mail directly to respondent, respondent would not know anything about correspondence received from, or on behalf of her clients, the Board, and the courts. As an example, Mr. Brink testified that the IRS notice of disbarment that was allegedly addressed to him, but sent to respondent's business address, remained in an unopened envelope for more than a year while Mr. Brink was on medical leave and hospitalized.

Mr. Brink testified that he personally took client tax information to the post office for mailing to the IRS. Although he claimed to use certificates of mailing when sending such documents, neither he nor respondent produced such verification of mailing.

Mr. Brink further testified that prior to 2002, respondent had no problem sending substitute Forms W-2 and W-3 to SSA, but that after 2002, all respondent's clients were receiving notices due to mismatches between the SSA and IRS data bases, which took respondent a number of years to resolve. He testified that the substitute Forms W-2 and W-3 that respondent submitted on behalf of her clients would have been recognized and entered into SSA's data base if the agency had properly scanned them, and that the Ogden, Utah, IRS office finally directed that the problem be corrected. However, neither Mr. Brink nor respondent offered documentary evidence from IRS or SSA to support Mr. Brink's contentions. Additionally, Mr. Brink testified that respondent had been working with the IRS Taxpayers Advocate Office to address the past Forms W-2 and W-3 scanning problems, but offered no independent documentary evidence to verify that contention.

Mr. Brink testified that Flyte-Weld's 2004 federal and state corporate tax returns were delivered to Flyte-Weld so the company could mail the returns to IRS and FTB, but could offer no independent documentary evidence to verify delivery of the returns to Flyte-Weld. Mr. Morgensen testified that Flyte-Weld never received the tax returns from respondent.

Mr. Brink also testified that in a letter dated June 26, 2006, he replied to Mr. Reid's inquiry and addressed all the issues raised as part of Mr. Reid's investigation. However, Mr. Reid testified that he did not receive any such correspondence from respondent or Mr. Brink and he did not recognize the letter.

Mr. Brink was obstinate when dealing with Mr. Reid, Mr. Daley, and Mr. Willis, and he ignored correspondence addressed and sent to respondent's place of business, and which he received on respondent's behalf.

Under cross-examination, whenever Mr. Brink was asked if he had any documentary evidence to support his contentions, his response was always that he could "only offer his own testimony." Documents that were presented by respondent, most of which were

received in evidence solely as administrative hearsay⁴, were generated from respondent's computer system. Letters that respondent presented were not signed and there was no evidence that the letters were actually sent to the addressees on or about the dates indicated in the correspondence.

32. Given the conflicting accounts, the testimony of Mr. Morgensen, Mr. Reid, Mr. Willis, and Mr. Daley are deemed much more credible than the testimony offered by Mr. Brink.

33. Based on the totality of the evidence, Mr. Brink acted as an agent / representative of respondent and her accountancy practice. However, respondent's delegation of authority to and reliance on Mr. Brink was excessive. Respondent failed to provide effective supervision of her practice and employee and, as a result, her conduct was negligent, unethical, unprofessional, and placed her clients at risk.

34. In summary, respondent failed to provide any reliable evidence to establish that she timely submitted Forms W-2 and W-3 to SSA for tax years 2002, 2003, and 2004, and that IRS and/or SSA acknowledged that it was merely a scanning problem that caused respondent's forms to not be recognized by SSA. Respondent failed to timely file Flyte-Weld's corporate state and federal tax returns or timely send them to Flyte-Weld so it could file them, failed to provide timely responses to Mr. Reid's inquiries on behalf of the Board, failed to timely provide Flyte-Weld's records upon request and failed to exercise due diligence in determining the authenticity of the numerous requests for records and the termination notice regarding her role as Flyte-Weld's CPA; and failed to timely notify the Board of her disbarment from practicing before the IRS.

35. The accountancy standard of practice with respect to tax returns is compliance with IRS instructions, including filing dates and time extensions. Failure to comply with IRS instructions is an extreme deviation from the standard of practice.

36. Failure of an accountant to return records within a reasonable time following a written request and/or failing to exercise due diligence in confirming the authenticity of such a request, is an extreme deviation from the standard of practice.

37. The reasonable cost for the investigation of this matter by the Board is in the amount of \$7,065.11. The reasonable cost for the prosecution of this matter by the Office of the Attorney General, up to the first day of hearing, is in the amount of \$6,715.00. Therefore the amount recoverable by the Board for the investigation and prosecution of this matter is \$13,780.11.

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⁴ Use of administrative hearsay is limited, pursuant to Government Code section 11513, subdivision (d).

LEGAL CONCLUSIONS

1. Business and Professions Code section 5100, states, in pertinent part:

After notice and hearing the board may revoke, suspend . . . or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

[¶] . . . [¶]

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations

[¶] . . . [¶]

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Suspension or revocation of the right to practice before any governmental body or agency.

2. Business and Professions Code section 5037, subdivision (b), states, in pertinent part:

A licensee shall furnish to his or her client or former client, upon request and reasonable notice:

(1) A copy of the licensee's working papers, to the extent that those working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

(2) Any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of documents of the client when they form the basis for work done by him or her.

3. Business and Professions Code section 5063 states, in pertinent part:

(a) A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

[¶] . . . [¶]

(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency.

[¶] . . . [¶]

(d) The report required by subdivisions (a), (b), and (c) shall be signed by the licensee and set forth the facts which constitute the reportable event. If the

reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(e) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events

4. California Code of Regulations, title 16, section 52 states, in pertinent part:

(a) A licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested.

[¶] . . . [¶]

(d) A licensee shall provide true and accurate information and responses to questions, subpoenas, interrogatories or other requests for information or documents and not take any action to obstruct any Board inquiry, investigation, hearing or proceeding.

5. California Code of Regulations, title 16, section 68 states, in pertinent part:

A licensee, after demand by or on behalf of a client, for books, records or other data, whether in written or machine sensible form, that are the client's records shall not retain such records. Unpaid fees do not constitute justification for retention of client records.

Although, in general the accountant's working papers are the property of the licensee, if such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client, then the information on those working papers must be treated the same as if it were part of the client's books and records.

6. Respondent is subject to disciplinary action under Business and Professions Code section 5100, subdivision (h), for unprofessional conduct, in that she was disbarred from practicing before IRS. (Factual Findings 4 and 5.)

7. Respondent is subject to disciplinary action under Business and Professions Code section 5100, subdivision (g), for unprofessional conduct; and section 5063, subdivision (a)(3), for failing to timely file a mandatory written report with the Board; in that respondent failed to notify the Board, within the statutory time period, of the revocation of her right to practice before the IRS. (Factual Findings 4, 5, and 6.)

8. Respondent is subject to disciplinary action under Business and Professions Code section 5100, subdivisions (g) and (h), for unprofessional conduct; and section 5063, subdivision (e), for failing to timely respond to a Board inquiry regarding a reportable event; in that respondent failed to timely respond to Mr. Reid's inquiry regarding her disbarment from practicing before the IRS. (Factual Findings 4, 5, and 6.)

9. Respondent is subject to disciplinary action under Business and Professions Code section 5100, subdivision (g) and (h), for unprofessional conduct; and California Code of Regulations title 16, section 52, for failing to timely respond to any Board inquiry; in that respondent failed to provide a timely response to a Board inquiry regarding her disbarment from practicing before the IRS, or to Board inquiries regarding her accounting practices, as they relate to Flyte-Weld. (Factual Findings 6, 22, 26, and 27.)

10. Respondent is subject to disciplinary action under Business and Professions Code section 5100, subdivisions (c) and (g), for unprofessional conduct, in that respondent demonstrated gross negligence and repeated negligent acts in failing to exercise due diligence when processing and filing Forms W-2 and W-3 and failing to timely file state and federal income tax returns, as they relate to Flyte-Weld. (Factual Findings 7 through 14, 28, 34, 35, and 36.)

11. Respondent is subject to disciplinary action under Business and Professions Code section 5100, subdivision (g), for unprofessional conduct; section 5037, subdivision (b), for failing to furnish client or former client records upon request and reasonable notice; and California Code of Regulations, title 16, section 68, for improperly retaining client records; in that respondent continued to retain Flyte-Weld's records, after repeated demands on behalf of Flyte-Weld for delivery of said records. (Factual Findings 15 through 29.)

12. Business and Professions Code section 5107, states, in pertinent part:

(a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

(b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

(c) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested to do so by the executive officer pursuant to subdivision (a). Costs are payable 120 days after the board's decision is final, unless otherwise provided for by the administrative law judge or if the time for payment is extended by the board.

[¶] . . . [¶]

(e) The administrative law judge may make a further finding that the amount of reasonable costs awarded shall be reduced or eliminated upon a finding that respondent has demonstrated that he or she cannot pay all or a portion of the

costs or that payment of the costs would cause an unreasonable financial hardship which cannot be remedied through a payment plan.

(f) When an administrative law judge makes a finding that costs be waived or reduced, he or she shall set forth the factual basis for his or her finding in the proposed decision.

13. The reasonable costs of investigation and prosecution of the case, is in the total amount of \$13,780.11. (Factual Finding 37.)

14. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 5107. In so doing, however, the Court directed the Administrative Law Judge and the Board to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Board must consider a respondent's subjective good faith belief in the merits of his or her position and whether that respondent has raised a colorable challenge; the Board must consider a respondent's ability to pay; and the Board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman, supra* at 45.)

In light of respondent's failure to raise a credible, colorable challenge to the allegations in the accusation, and her failure to establish that it would be unduly punitive to require her to pay the entirety of the Board's reasonable costs of investigation and prosecution, even after considering the severity of the below order, the sum of \$13,780.11 is deemed an appropriate amount for respondent to reimburse the Board.

ORDER

WHEREFORE, THE FOLLOWING ORDER is made:

Certified Public Accountant Certificate Number 17488, issued to Sandra E. Kardos, is hereby revoked.

Respondent shall, forthwith, comply with California Code of Regulations, title 16, section 68, with respect to providing Flyte-Weld, Inc., or its designated accountant, all accounting records previously requested on behalf of Flyte-Weld, Inc.

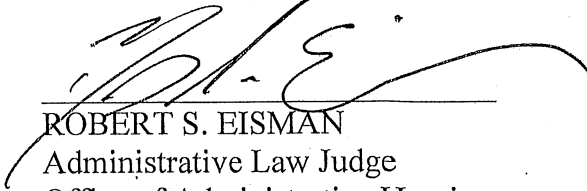
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Respondent shall pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees, in the total amount of \$13,780.11. Said amount shall be payable 120 days after the Decision of the California Board of Accountancy is final. Respondent shall be permitted to pay these costs in a payment plan approved by the Board.

DATED: July 2, 2008.



ROBERT S. EISMAN
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JENNIFER S. CADY
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8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2007-28

13 SANDRA E. KARDOS
P.O. Box 9333
14 Van Nuys, CA 91409

ACCUSATION

15 Certified Public Accountant License No. CPA
17488

16
17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Officer of the California Board of Accountancy (Board), Department of
23 Consumer Affairs.

24 2. On or about April 21, 1972, the Board issued Certified Public Accountant
25 License No. CPA 17488 to Sandra E. Kardos (Respondent). The license was in full force and
26 effect at all times relevant to the charges brought herein against Respondent. The license will
27 expire on August 31, 2007 unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5037, subdivision (b) states:

"(b) A licensee shall furnish to his or her client or former client, upon request and reasonable notice:

(1) A copy of the licensee's working papers, to the extent that those working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

(2) Any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of documents of the client when they form the basis for work done by him or her."

5. California Code of Regulations, title 16, section 68, states, in pertinent part:

"A licensee, after demand by or on behalf of a client, for books, records or other data, whether in written or machine sensible form, that are the client's records shall not retain such records. Unpaid fees do not constitute justification for retention of client records"

6. Section 5063 states, in pertinent part:

"(a) A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

....

(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency."

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1 "(e) A licensee shall promptly respond to oral or written inquiries from the
2 board concerning the reportable events, including inquiries made by the board in conjunction with
3 license renewal."

4 7. Section 5100 states:

5 "After notice and hearing the board may revoke, suspend or refuse to renew any
6 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
7 (commencing with Section 5080), or may censure the holder of that permit or certificate for
8 unprofessional conduct which includes, but is not limited to, one or any combination of the
9 following causes:

10 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in
11 the same or different engagements, for the same or different clients, or any combination of
12 engagements or clients, each resulting in a violation of applicable professional standards that
13 indicate a lack of competency in the practice of public accountancy or in the performance of the
14 bookkeeping operations described in Section 5052.

15

16 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
17 board under the authority granted under this chapter"

18 "(h) Suspension or revocation of the right to practice before any governmental
19 body or agency."

20 8. California Code of Regulations, title 16, section 52, subdivision (a) states:

21 "A licensee shall respond to any inquiry by the Board or its appointed
22 representatives within 30 days. The response shall include making available all files, working
23 papers and other documents requested."

24 9. Section 5107 provides, in pertinent part, that the Board's Executive
25 Officer may request the administrative law judge, as part of the proposed decision in a disciplinary
26 proceeding, to direct any holder of a permit or certificate found to have committed a violation or
27 violations of this chapter to pay to the Board all reasonable costs of investigation and prosecution
28 of the case, including, but not limited to, attorney's fees. The board shall not recover costs

1 incurred at the administrative hearing.

2 FIRST CAUSE FOR DISCIPLINE

3 (Suspension From Practice Before the Internal Revenue Service)

4 10. Respondent is subject to disciplinary action on the grounds of
5 unprofessional conduct as defined in section 5100, subdivision (h), by reason of the following:

6 a. On or about October 2, 2006, the Internal Revenue Service ("IRS") issued
7 an order disbaring Respondent from practicing before the IRS. The order was by way of a
8 Default Decision, and became effective 30 days after issuance. The facts and circumstances are as
9 follows:

10 b. The United States Department of Treasury, Director of the Office of
11 Professional Responsibility, filed a complaint on November 1, 2004, alleging that Respondent
12 engaged in disreputable conduct, and demanded that Respondent be disbarred from further
13 practice before the IRS. Respondent filed an Answer. The matter was set for hearing on August
14 30, 2006. Neither Respondent, nor a designated representative, appeared. Therefore, a Default
15 Decision was entered in favor of Complainant.

16 SECOND CAUSE FOR DISCIPLINE

17 (Reportable Event)

18 11. Respondent is subject to disciplinary action, pursuant to section 5063,
19 subdivision (a)(3), for failing to report to the Board her disbarment from practicing before the IRS
20 as more fully detailed in paragraph 10, above.

21 THIRD CAUSE FOR DISCIPLINE

22 (Failure to Respond to Board Inquiries)

23 12. Respondent's license is subject to disciplinary action, pursuant to sections
24 5063, subdivision (e); 5100, subdivision (g) and California Code of Regulations, title 16, section
25 52. The facts and circumstances are as follows:

26 a. On or about April 7, 2006, the Board mailed a letter to Respondent
27 advising her that a complaint was filed by Joshua Willis on behalf of Flyte-Weld, Inc. Respondent
28 was given until May 6, 2006 to respond. On or about May 31, 2006, a second letter was mailed,

1 via certified delivery, to Respondent informing her of the requirement, under the Accountancy
2 Regulations, to respond to the Board, in writing, within 30 days of the date of the letter. Her
3 written response was due by June 30, 2006. On or about September 27, 2006, another letter was
4 mailed to the Respondent, via certified delivery, regarding the above mentioned complaint filed by
5 Mr. Willis. Respondent has failed to respond to any of the above mentioned letters regarding the
6 complaint filed by Mr. Willis.

7 b. On or about January 23, 2007, the Board mailed, via certified and regular
8 U.S. mail delivery, a letter to Respondent informing her that the Board received a complaint from
9 LeRoy and Norma Marquardt, and that the Board also received notification of her disbarment
10 from practice before the IRS. The Board requested that Respondent provide a written response,
11 within 30 days, to the complaint filed by the Marquardts and a written explanation of the facts and
12 circumstances that led to the disbarment. The Respondent failed to respond. On or about
13 February 23, 2007, the Board mailed another letter, via regular U.S. Mail and certified mail
14 delivery, to the Respondent advising her that the Board has yet to receive her response to its
15 January 23, 2007 letter. The Board requested a response by March 25, 2007. Again, the
16 Respondent failed to timely respond.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Gross Negligence or Repeated Negligent Acts)

19 13. Respondent is subject to disciplinary action on the grounds of
20 unprofessional conduct as defined in section 5100, subdivisions (c) and (g), by reason of the
21 following:

22 In or about 2000, Flyte-Weld, Inc. ("Flyte-Weld") corporation engaged the
23 services of Respondent to provide accounting services to Flyte-Weld. The services included, but
24 were not limited to, preparation and filing of federal and state income tax returns and preparation
25 and filing of federal forms W-2¹ and W-3².

27 1. Federal form W-2 is a wage and tax statement.

28 2. Federal form W-3 is a transmittal form for the wage and tax statement.

a. Respondent failed to file federal forms W-2 and W-3, with the Social Security Administration (SSA), for tax years 2002, 2003 and 2004. Flyte-Weld subsequently received, from the IRS, a Notice of Penalty Charge for \$48,263.30 for the 2002 tax year. Moreover, Flyte-Weld received a notice from the IRS informing it that the 2003 wage amounts reported to the SSA did not reconcile with the wage amounts reported on the corporate employment tax returns for 2003.

b. Respondent failed to prepare federal and state corporate income tax returns for 2004 for Flyte-Weld. Flyte-Weld was not aware that the returns were not prepared until the corporation terminated Respondent's services in or about February 2006. The filing deadline was June 15, 2005. Hence, based on Respondent's inaction, the corporate returns for 2004 were filed late.

FIFTH CAUSE FOR DISCIPLINE

(Retention of Client Records)

14. Respondent's license in subject to disciplinary action, pursuant to sections 5037, subdivision (b), and California Code of Regulations, title 16, section 68. The facts and circumstances are as follows:

On or about February 25, 2006, Flyte-Weld sent a letter to Respondent terminating her services and instructing her to provide its new accountant, Robert Daley (Daley), with any and all records that he requests.

On or about February 28, 2006, Daley sent a letter, via facsimile and U.S. Mail, requesting that Respondent, among other things, send all original documents, from at least May, 2005, pertaining to Flyte-Weld. Additionally, Daley requested copies of the general ledger, payroll reports and state and federal tax returns since 2001. Daley sent, via facsimile, additional request to produce records on March 20 and 21, 2006. To date, the Respondent has failed to provide the requested information.

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1 PRAYER

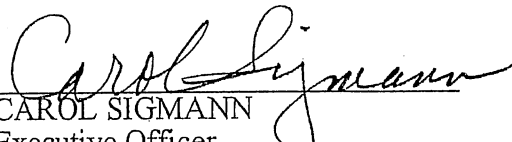
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

4 1. Revoking or suspending Certified Public Accountant License No. CPA
5 17488, issued to Sandra Kardos;

6 2. Ordering Sandra Kardos to pay the California Board of Accountancy the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 5107; and,

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: July 30, 2007
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13 CAROL SIGMANN
14 Executive Officer
15 California Board of Accountancy
16 Department of Consumer Affairs
17 State of California
18 Complainant

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18 Kardos Accusation.wpd
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